

*United States Court of Appeals
for the Second Circuit*



**APPELLEE'S
APPENDIX**

75-7433

United States Court of Appeals FOR THE SECOND CIRCUIT

ELI RAITPORT,

Plaintiff-Appellant,

v.

COMMERCIAL BANKS LOCATED WITHIN THIS DISTRICT AS A CLASS, FOUNDATIONS OPERATING INVESTMENT PORTFOLIOS AND MANAGED DIRECTLY OR INDIRECTLY BY ABOVE SAID BANKS AS A CLASS,

Defendants-Appellees.

APPENDIX OF DEFENDANT-APPELLEE, FIRST NATIONAL CITY BANK

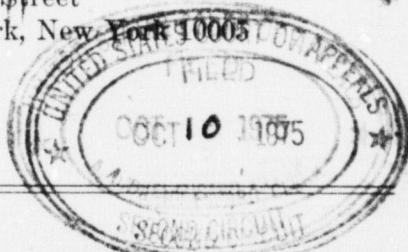
SHEARMAN & STERLING

Attorneys for the Defendant-

Appellee, First National City Bank

53 Wall Street

New York, New York 10005



4

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	PAGE
Summons	A1
Amendment to the Complaint	A2
Complaint	A4
Exhibit II, Annexed to Complaint	A17
Exhibit III, Annexed to Complaint	A20
Complaint	A21
Memorandum Decision and Order	A26
Memorandum and Order	A33

Summons.

(75 Civ. 66)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

Plaintiff,

v.

COMMERCIAL BANKS LOCATED IN THIS DISTRICT, FOUNDATIONS
OPERATING INVESTMENT PORTFOLIOS AND MANAGED DIRECTLY
OR INDIRECTLY BY THE ABOVE SAID BANKS,

Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon plaintiff's attorney, pro se, whose address 1807 Mower Street, Philadelphia, Pa, 19152, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURCHARDT
Clerk of Court.

(ILLEGIBLE)
Deputy Clerk.

[Seal of Court]

Date: Jan. 8, 1975.



Amendment to the Complaint.

(75 Civ. 66)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

Plaintiff,

against

COMMERCIAL BANKS LOCATED IN THIS DISTRICT, FOUNDATIONS
OPERATING INVESTMENT PORTFOLIOS AND MANAGED DIRECTLY
OR INDIRECTLY BY THE ABOVE SAID BANKS,

Defendants.

Defendants are a true class, fully satisfying the requirement of Rule 23(a) F.R.C.P. and 23(b)(1) F.R.C.P. whereas First National City Bank as a true representative of the class and may be sued as such.

1. There are over seventy (70) banks being sued, this litigation is very complicated, it will be a substantial amount of documents filed and discovery procedures; therefore it will be an extreme burden on the litigants to serve all papers to each litigant and would be a *great waste* of judicial time just to read so many documents, while it will serve no purpose for justice as set forth below.
2. *All* questions of law *and* facts are common to the class.
3. The defenses of the representative party are typical to the defenses of the class.
4. The representative party is allegedly the largest bank of the class and the second largest in the United

Amendment to the Complaint.

States and the third largest in the world and certainly capable and will vigorously defend its own interest and that the interest of the class.

5. Inconsistent or varying adjudications with respect to individual members of the class which will establish incompatible standards of conduct.

6. As far as Foundations are concerned, there are several hundreds of Foundations involved, and it is alleged that First City National Bank is managing the investment portfolios of many foundations, and the Bank is actually the "guardian" of many foundations, and the Bank is capable vigorously to defend the interest of those foundations.

7. All questions of law and facts are common to the class.

8. Again the defenses of all Foundations expected to be common to the entire class.

9. The names of these defendant foundations are presently within the sole possession of the defendant's banks and could not be served otherwise.

10. Inconsistent or varying adjudications with respect to individual members of the class which will establish incompatible standards of conduct.

Dated: Philadelphia, Penna., January 21, 1975.

Respectfully submitted,

E.R.
Eli Raitport,
Plaintin

Complaint.

(75 Civ. 66)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

Plaintiff,

v.

COMMERCIAL BANKS LOCATED WITHIN THIS DISTRICT AS A CLASS, AND FOUNDATIONS OPERATING INVESTMENT PORTFOLIOS AND MANAGED DIRECTLY OR INDIRECTLY BY ABOVE SAID BANKS AS A CLASS,

Defendants.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is alleged on the following grounds:

(a) Federal question stands in alleged violation of Anti-Trust laws and private action is permitted; 16 USC 16.

(1) Plaintiff alleges that defendants have unlawfully refused to deal with him and restrained him from continuing and entering business as set forth below in violation of 15 USC 2;

(2) Plaintiff alleges that defendants have conspired to refuse to deal with him in violation of 15 USC 1 & 2.

(3) Plaintiff alleges that defendants have conspired to destroy investment banking industry for the goal of monopolizing the commercial banking industry in violation of 15 USC 1 & 2.

Complaint.

(4) Plaintiff alleges that defendants conspired on behalf of automotive, appliances, energy producing and food producing industries to monopolize in violation of 15 USC 1 & 2.

(5) Plaintiff alleges that defendants discriminate without justification against new manufacturing businesses in violation of 15 USC 13.

(6) Plaintiff alleges that defendants discriminate without justification against small manufacturing companies competing or attempting to compete against energy producing, automotive, appliances and container industries in violation of 15 USC 13.

(b) Federal question stands when diversity of citizenship is found.

Plaintiff, Eli Raitport, brings this matter in this Court against above defendants; he alleges and complains the following:

1. That he is a citizen of the United States and a resident of the State of Pennsylvania; that he is an inventor-entrepreneur for several years, has devoted his full time and total of his resources to resolve the chronic problems of this society:

(a) Inflation—which is a product of the rise of social needs exceeding productivity.

(b) Safety—which is a product of neglect to coordinate at all levels rising standard of living and consideration for human life.

(c) Energy shortage—which is a product of growing social demand and static development in these fields.

2. Traditionally, inventor-entrepreneurs are providing the additional “fuel” into the “machine of economy” to

Complaint.

keep it in perpetual *positive** motion. That can be explained in somewhat simplified fashion as follows:

Healthy human nature is to strive for achievement: to have today more than yesterday and tomorrow more than today. In our social structure of the free world, that human nature is usually expressed in the economic side of life. That is expressed by way of demand for higher profit and greater wages, which is supposed to produce more commodities for each individual in quantity and/or quality.

However, increasing of profit and wages is only an artificial coverup or blinder to the situation; because it does not produce more commodities and services in quality and/or quantity unless GNP (Gross National Product) is truly increased. It generates only expansion of monetary supply, and consequently greater demand for at least some commodities; thus generating internal pressure for some groups of human beings to cash in on the opportunity and to demand still greater reward for their services. Other groups being envious of the achievement of their counterparts are also making greater demands for their services, thus resulting in spiral of inflation, unless GNP is truly, continuously, exponentially growing.

But GNP is made up of nothing else but services produced by human beings. Since production of most human beings is fairly constant a steadily increasing gap is ever present, unless a small minority of human beings, possessing the divine of true creativity—inventor-entrepreneurs; increase the production of large groups of human beings at once.

Thus Thomas Edison substantially increased productivity of human beings in lighting and heating and general energy converting industries; Henry Ford, Sr., increased the rate of human productivity in transportation indus-

* Without downtrends like recessions and depressions.

Complaint.

try; Dr. Lyn increased the rate of human productivity in reproduction industry and so on.

That prosperity was achieved not only for the industries directly involved but for the entire nation and the world in whole, by releasing manpower for its use in other industries. For instance, computers have enormously increased human productivity in the field of calculation and data processing in general, therefore releasing millions of people from those chores, without decreasing the supply of that "product"; and consequently not creating a shortage or internal pressure for higher price for data processing. In other words, the cost of data processing had deflated.

The millions of people released for chores in other industries could increase the productivity there (even without great innovations) in order to keep off inflationary pressure; that is to provide for ever increasing demand without generating the opportunity for undue demands of greater profit and wages.

The computers also helped to satisfy the above said normal and justified demands for greater profit and wages, that demands which generates the basic incentive for social-economic machinery of the free world. Because the increased productivity of human beings in data processing field compensated for lack of such increment in other industries. Since in a final product data processing constitutes a part of the cost, its deflation compensated for inflation of other "portions" of a product.

Consequently inventor-entrepreneurs are supplying the "fuel" for perpetual motion of healthy economy.

3. However, that can exist only when prohibition of restraint of trade is well executed; when inventor-entrepreneurs are not precluded from starting business. Such atmosphere creates an ever growing competition among all

Complaint.

industries at all levels striving to increase its production in quantity and quality.

4. Also it generates a fierce competition between commercial banks and investment bankers both for the money supply—peoples' saving and institutional investments—and for the money market—the industry needing money for continuous expansion and modernization—and consumer credit.

The money supplier finds investment more attractive than deposit in banks; grandiose capital gains are possible.* On the other end the money user—the industry finds more attractive to use equity money than bank loans because it is more flexible to adjust to circumstances.

5. That the defendants shortsightingly saw that at least in short term their profits could be substantially increased if entrepreneur-investors would be restrained from starting business, that would eliminate large capital gains from investment, discourage money supply from flowing into investments, and divert that money supply into commercial banking; consequently concentrating money transaction in the commercial banking system and allow to raise interest rates at will.

6. Defendants have seen the benefit for oligopolies as well from restraining of trade entrepreneur-investors. The oligopolies were compelled to disburse profits to modernize operations; and they could not limit production and raise prices; because shortage of supply and price increase only increases incentive for entrepreneurs to start business and compete.

* Original investment in Digital Equipment Co. produced about \$6,000.00 to \$1.00; and original investment in Xerox produced about the same; and so other firms the formation which is a result of direct or indirect entrepreneur of an entrepreneur-inventor.

Complaint.

For instance, should this plaintiff have introduced into the market some of his devices which would have resulted in savings of 5% of total energy consumption, the manufacturing of "energy crises" would have been impractical and the additional \$50,000,000,000.00 per year for the oil industry would never been realized.

Consequently, the banks have engaged in a subterfuge to restrain inventor-entrepreneurs from trade and instant plaintiff included.

7. That defendants are business establishments, citizens of New York, who were given privileges over other people in exchange for obligations procured from them by the people.

(a) That defendants have been granted exclusive right to borrow people's money from Federal Reserve Bank and relend to very same said people at a higher interest; whereas profit is put right into their (defendants') hands.

(b) That defendants were given exclusive rights to engage in banking business and their territory is well protected from possible saturation; where the doctrine of equal right of people to engage in any business of one's choice has been abrogated in defendants' favor.

8. That in consideration of the foregoing it is defendants' obligation to promote industry and commerce for the benefit of the people. Namely, to help develop industry and commerce is the spirit of policy proclaimed by Congress; that policy being expansion of free competition. Formation of new enterprises is an indispensable procedure in fulfillment of said obligation.

Whereas promotion of free entry into trade and business of one's choice is a necessary building block for preservation and expansion of competition; and therefore failure

Complaint.

to establish new enterprises leads to monopolies, which are not only fixing prices but also capable of creating shortages of vital commodities and simultaneously quadruple profits at the expense of people, and put in danger the very existence of people.

9. That the people procuring aforesaid obligations from said defendants have vested right into every truly eligible person to obtain financing from defendants for such business which purports to expand competition.

10. That defendants are business establishments whose responsibility to obey and comply with congresses' proclaimed policy to support free competition and free entry into any trade and business of one's choice, whereas, defendants' role in fulfillment of said responsibility is expressed in extending credit for the purpose of establishing new business and expand competition, especially in industries, where very limited competition exists.

11. That defendants are business establishments whose responsibility to stay and comply with the spirit of Congressional policy proclaimed in Economy Stabilization Act lies in extending credit and lending money for the purpose to produce innovative products for established uses in a more economical way; which means utilizing less manpower and/or less raw material, and/or less energy for achievement of same results. (It has been established as a matter of fact, that only new companies or relatively new firms striving to grip a chair in the market are interested at all to produce more economically; while well established firms concentrate their efforts on monopolization of the industry rather than innovation.)

12. That defendants have acquired duty under mutuality of remedies doctrine, to be responsive to entrepreneur

Complaint.

and assist financing his venture, if said venture is within the spirit of Congressional policy either to expand competition or to produce more economically product(s) for an established use.

13. That defendants have totally disregarded the 5 aforesaid theories of obligations and adopted a policy of specifically not to finance new establishment.
14. That defendants adopted a policy not to assist to organize new ventures.
15. That defendants adopted a policy to curtail and prevent any flow of capital to new firms.
16. That defendants adopted a policy to influence and persuade public not to invest in new firms.
17. That defendants adopted a policy to slander new establishments by assigning to them sarcastic names like: "fly by night Charley; fly by night outfit; overnight boutique, etc."
18. That defendants have defrauded and deceived the public and misrepresented the actual status of risk involved in investment in new firms versus investment in established firms telling that investment in new firms is very risky and calling it by sarcastic expressions like: "burning money; shooting flies, etc."
19. That defendants were aware or should have been aware that statistically investment in new establishments is at least 1.56 times better "risk" than investment in old establishments.
20. That defendants have conspired with each other and foundations and on behalf of energy producing companies,

Complaint.

automotive manufacturing companies, major appliance manufacturing and container manufacturing companies to limit competition and monopolize these industries; and to destroy small investment bankers.

21. That for several years plaintiff made numerous requests to said defendants on behalf of several companies to help finance firms said plaintiff organized for the purpose to manufacture for established uses innovative and more economical products which these companies have developed. Plaintiff would own at least 90% of every said firm he organized. Due to defendants' action these firms never became operational. Plaintiff made substantial investment in each of these firms.

22. That manufacturing of the 36 lines of products, listed below, the plaintiff was seeking to finance, would considerably contribute to the well-being of the people, especially in prevention of energy crises; each of the said 36 lines offers an excellent profit potential, and each of the said 36 lines satisfied the seven points listed in Exhibit 3.

23. (1) clothes washing machines,
- (2) dishwashing machines,
- (3) metal cleaning and deburring machines,
- (4) un-even surface metal polishing machines.

These said apparatuses would be utilizing energy released in process of conversion laminar flow into turbulent flow, and therefore, by means of series hydraulic and mechanical advantages, require only a small fraction of energy as compared with conventional equipment; and manufacturing cost of said apparatuses would be drastically low.

Complaint.

(5) small generators installed in water lines in houses and generating electricity,

(6) hydroclave closures at cost less than 30% of the conventional types,

(7) small hydroclaves at cost less than 50% of the conventional types.

The following type of switches based on a new type of switching mechanism which reduces the manufacturing cost of said switches at least by 60%.

(8) courtesy light switches for cars and appliances,

(9) headlight switches for vehicles,

(10) power seat switches for vehicles,

(11) power window switches for vehicles,

(12) seat belt switches for vehicles,

(13) float switches used in brake fluid reservoirs in vehicles,

(14) float switches for remote control of fluid levels,

(15) multi-directional switches,

(16) snap-switches for circuit-breakers and machinery control,

(17) key-board switches which would be produced at 80% more economically than conventional type,

(18) snap push-pull switches for use in buildings and equipment,

(19) push-push multi-circuit switches for use in television, etc.,

(20) energy absorbing devices for cars which would protect the car in collision up to 15 miles per hour, and

Complaint.

about 4 times more economical than the conventional ones which protect the car at speeds only up to 5 miles per hour,

(21) vibration isolators for heavy appliances and light machinery and about 4 times more economical than the conventional,

(22) vehicle occupants protection devices about 6 times more economical than inflatable bags and safer,

(23) "exhaust fumes scrapers" for industrial users and automobiles, considerably less expensive and which are not "fuel gobblers",

(24) rotary engines, *inter alia* would reduce consumption fuel,

(25) small heating systems for dwelling which would reduce consumption of fuel by 30%,

(26) electrical connectors which would be produced 70% more economically than conventional,

(27) holding instruments for use with tool-machines, welding tables, work tables, conveyorized assembly lines and holding of molds, at least 70% more economical than conventional devices,

(28) hydraulic and pneumatic cylinders integral with valves,

(29) hydraulic packages,

(30) heat exchangers,

(31) molding machines,

(32) mechanical, numerically controlled machinery center,

(33) reusable spray containers which would simultaneously help the solid waste disposal problem,

Complaint.

- (34) collapsible shipping containers which would also simultaneously help the solid waste disposal problem,
- (35) beverage containers with comparable advantages,
- (36) burners, primarily for heating of dwellings.

24. That in furtherance of their malicious conspiracy and act to monopolize industries defendants were mainly concerned to prevent formation of and extinguish engineering and scientific company who engaged or intended to engage in infringement on oligopolies; and therefore, established a practice to discount assets of research and development and specialized equipment; and automatically influenced the accounting practice and public to do the same. That way, any company who is (or intends) infringing on oligopoly becomes much under-capitalized by a swift of a pen and undesirable for financing, regardless of true potential for profit and stability. It is obvious that a machine shop having \$5,000,000. worth of conventional tool machines and buildings is by no means a threat to Con Edison or General Electric Company or General Motors Corporation. Such said machine shop could be only a customer and a servant to Con Edison, General Electric and General Motors. But a firm manufacturing generators to install in water lines in houses will reduce consumption of electricity and therefore, it is infringing on Con Edison's monopoly. But such company would have rather large investment in research and development and *special* machinery and tooling. They would have none of conventional machine shop equipment or only a small amount. Discounting their investment in research and development and specialized machinery, they are put in position that is unbankable and that very often becomes the end of the firm which would prevent the energy shortage.

Complaint.

25. That in years 1970 through 1973 plaintiff has approached individually each and every defendant of the classes above at least two times by mail and several banks he also approached in person; every time his (plaintiff's) proposals were rejected without consideration, just on its face because its against banks policy to invest in new companies and to invest in companies intending to compete in the above said 5 industries.

WHEREFORE, plaintiff was totally restrained to commence operation of any of the companies he organized for manufacturing; the (illegible) Company he organized has been destroyed in consequence. Plaintiff suffered material damages in excess of (\$2,000,000,000) two billion dollars and emotional injury; and that plaintiff demands verdict against all defendants individually, jointly or alternatively compensation for damages he suffered (illegible), plus cost and interest and such other remedies, this court will find just and equitable.

Respectfully submitted,

ELI RAITPORT
ELI RAITPORT
c/o Scientronic Corporation
8220 Caster Avenue
Philadelphia Pa., 19152

December 26, 1974.

Exhibit II, Annexed to Complaint.

ANALYSIS OF BUSINESSES FAILURES—NEW BUSINESS VERSUS ESTABLISHED BUSINESSES (Based on statistical records by Dunn and Bradstreet (1969)

December 6, 1971

(Re-typed from original December 10, 1974)

In the past, creation of a market necessarily was a slow, hit and miss process; therefore, marketability of a product by a new company was a risk of high degree. Secondly, the level of intellectuality of average people was lower in the past; and with that goes adaptability; therefore it took years to build a good management team. Consequently, a new firm used to be a poor risk.

However, that has been changed drastically; at the present, markets are being created almost instantly and marketability for certain products can be easily predicted. A management team can be rapidly built. That is reflected in business history.

On the other hand, an established company is not in a good position to adopt new products and changes necessary for the business climate in general, because an established company has established politics, policies, and procedures to cope with, seniority problems, union contracts with each new one having to be better than the last, plans for compensation to retired executives, and etc., *often totally disregarding business conditions*. An old company is comparable to an old building; often it is more economical to demolish it and build a new one rather than updating it. Failures of businesses aged 5 years or less represented in 1947—77.6% of total failures; in 1969—53.2% of total failures, which represents a considerable drop. To the contrary, percentages of failures of older businesses are constantly rising. Businesses of over 10 years of age rep-

Exhibit II, Annexed to Complaint.

resented in 1947—9.1% of total failures; in 1969—22.5% of total failures, which is an increase of 246%.

Businesses 6 to 10 years of age represented in 1947—13% of total failures in 1969—24.4% of total failures. (Failures of Businesses recorded in Dunn and Bradstreet, 1969.)

The record of failures of business one year old show the same trend. (Same Source) in 1960—3.5% of total failures in 1969—2.4% of total failures

Statistics of failure by liability size demonstrate even more how meaningless the past record could be. While for businesses over 10 years old in general the rate of failures increased only 2½ times over 22 years; for large businesses with liabilities of over one million dollars (and therefore large tracts of large earnings) rate of failures increased 17 times over 19 years. The reason for that is fast abolishment of markets and inflexibility of large company policies.

A bank would further minimize failures through careful analyzing competence of management and experience of staff. In a small and new company it is easy to do but for a bank to analyze management and staff of a large company that is established, it is almost impossible.

Then 25.7% of failures contributed by business in the first three years of age would be reduced by 74.2% (55.6% which are failures due to incompetence of management plus 10.8% due to lack of management, plus 7.8% due to lack of experience equals 74.2%). (Failure record of business D&B 1969). That equals only 6.6% (25.7% multiplied by 100% minus 74.2%); or, 35/10,000 multiplied by 6.6% equals 2.2% failures/10,000 businesses.

In other words, totally new and untried businesses with competent management contribute to true and inherent, self-generating mortality equal to 2.2 failures per 10,000

Exhibit II, Annexed to Complaint.

businesses in the first three years, while these new businesses constitute 10.3% of the business population. Consequently, in this age, wisely financing of start up businesses is a *better* risk by a factor of 34 multiplied by $(10.3)/(2.2)=1.59$ at least. Hence, the formula of relative risk of success in new business (less than three years old) versus established business (over 10 years old) may be expressed as follows:

$$\frac{.257(1-.556-.108-.078)(1-.103)}{[1-.257(1-.556-.108-.078)](.103)} = 0.62$$
$$\frac{1}{0.62} = 1.61 \approx 1.59$$

That is despite all out efforts by banks and big companies to destroy little companies by commission and omission. Furthermore, a bank should deduct from above figures fraudulent start ups; since in a small new business a bank could and should easily detect any fraudulent business.

ELI RAITPORT, PRESIDENT
SCIENTRONIC CORPORATION
8220 Castor Avenue
Philadelphia, Pa. 19152

Exhibit III, Annexed to Complaint.

[LETTERHEAD OF SCIENTRONIC CORPORATION]

Advanced Products for Industry

1. Have an established demand; in other words, a substitute for a product which has been in use for a long time.
2. Offer a tangible advantage over competition; i.e. this, our product, would be sold at a considerably lower cost than its substitute currently in use.
3. Perform considerably better than its substitute.
4. Have a broad market.
5. Afford a net profit on sales of at least 50 percent.
6. Afford a basic patent protection, which makes circumventions difficult or impossible.
7. Require relatively low investment for introduction into the market.

One should not confuse Scientronic Corporation with other situations where one or a group of inventors wake up with an invention one day, in which case it is often best, in order to achieve success, to separate the invention from the inventor(s).

Conversely, this test possesses unique know-how in manufacturing and management.

This team had the foresight to see in the 60's, the drive of the industry to increase production in the 70's.

Complaint.

(74 Civ. 462)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

v.

CHASE MANHATTAN CAPITAL CORPORATION OF N.Y., FNCC
CAPITAL CORPORATION OF N.Y., MIDLAND CAPITAL CORPO-
RATION OF N.Y., HANOVER CAPITAL CORPORATION OF N.Y.

COMPLAINT IN EQUITY AND LAW

Jurisdiction of this Court is alleged on diversity of citizenship, and Tort of Federal Statute, and deprivation of constitutional and statutory rights, and Anti-trust Act, where Federal question stands.

TO THE HONORABLE COURT AND JURY:

Plaintiff, Eli Raitport, a citizen of Pennsylvania, brings this matter in court alleges and complains.

1. That, the Congress had empowered the Small Business Administrations (U.S. Government) to license Small Business investment Corporations pursuant to Chapter 14B, USC15, for the purpose therein expressed in Congress' declaration of policy.

"It declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the

Complaint.

small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: Provided, however, That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources."

2. Plaintiff Eli Raitport is an entrepreneur for several years, has devoted his full time and resources to resolve the chronic problems of the society:
 - 1) Inflation—which is a product of the rise of social needs exceeding productivity.
 - 2) Safety—which is a product of neglect to coordinate, at all levels, rising standard of living and consideration for human life.
 - 3) Energy shortage—which is a product of growing social demand and static development in these fields.
3. The defendants are Corporations of the State of New York, have been licensed pursuant to said law, and granted certain privileges by the Government in exchange for obligation to finance small business for expansion of competition which otherwise could not be accomplished, because such financing is conservatively considered by banking establishments to be too risky for conventional capital sources.
4. Long ago, the Congress have decided that the solution to all three problems lies in better application

Complaint.

and utilization of technology, to the everyday consumer's problem, and therefore, the solution to the above problems lies in expansion of free competition. Because new firms are eager to develop improved products at a lower cost, while established firms prefer to maintain the process for which the tooling has been amortized long ago, and concentrate the efforts on monopolizing the industry and rising prices.

5. Therefore, for the peoples' benefit the Congress enacted the Anti-Trust Act; then the Small Business Act, subchapter 14AUSC15; then the Small Business Investment Act, subchapter 14BUSC15; then Economy Stabilization Act, subchapter 21.

The essence of all above legislation is to promote rise of productivity through expansion of competition.

6. Pursuant to above said Small Business Investment Act, defendant has been granted substantial privileges which are an integral part of the Small Business Investment Corporation licensee, in consideration for commitment to finance establishment of new business (through loans and investment) and finance small business in general, especially helping expansion of competition, and all other aspects, which are the purpose of chapter 14USC15.
7. Defendants have also caused dissemination of publicity that they are helping to establish new business in order to expand competition for the benefit of the people, thus misleading and causing small entrepreneurs to bleed their resources, in attempt to obtain financing from defendants, and finally cease activities.

Complaint.

8. Plaintiff has approached the defendant numerous times with requests to help finance production of various products developed by the companies that the plaintiff is identified with.
9. Not only, did the defendant refuse to consider helping finance said companies, but they were instrumental to prevent other financial institutions from helping plaintiff, thus jeopardizing the national goals and Congressional policy and defrauding and deceiving the Government and the people by false promises.
10. As evidence will show, at the time of the trial, said defendants were engaged in an unscrupulous conspiracy to help monopolize certain industries i.e. to preclude establishment of new firms in automotive field, in appliance field, and energy producing or energy conservation fields.
11. Whereas, plaintiff alleges that:
 - a) Defendants breached their duty to the people to finance establishment of new firms to expand competition and to finance the establishment of new firms to help resolve energy inflation and safety crises.
 - b) Defendants breached their duty procured from them by the people in consideration of tax advantages and other privileges granted to them.
 - c) Defendants defrauded and deceived indicating that they do finance new firms and caused plaintiff to invest money and time to develop new firms.

Complaint.

- d) Defendant conspired to deprive plaintiff of his Civil Rights guaranteed by the U. S. Constitution and Statutes in violation of 1985USC42. (By declaration of policy, Congress granted rights to the plaintiff to be helped in his endeavor to carry out the policy of the Congress, by every other citizen as appropriate. Refusing to assist plaintiff, defendant have deprived plaintiff of said right.)
- e) Defendant conspired to restrain plaintiff from entering trade of his choice, in violation of (equity) 3USC15.

Wherefore, plaintiff has suffered loss of profit of three hundred fourteen million dollars (\$314,000,000.00) and requests the Honorable Court and Jury to award him treble damages plus interest from the date thereof.

Respectfully Submitted,

ELI RAITPORT
Eli Raitport, plaintiff
Scientronic Corporation
8220 Castor Avenue
Philadelphia, Penna., 19152

January 14, 1974

Memorandum Decision and Order.
(75 Civ. 66)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

Plaintiff,

against

COMMERCIAL BANKS LOCATED WITHIN THIS DISTRICT AS A CLASS, AND FOUNDATIONS OPERATING INVESTMENT PORTFOLIOS AND MANAGED DIRECTLY OR INDIRECTLY BY ABOVE SAID BANKS AS A CLASS,

Defendants.

APPEARANCES:

ELI RAITPORT
Pro Se
1807 Mower Street
Philadelphia, Pennsylvania 19152

SHEARMAN & STERLING
Attorneys for Defendant
First National City Bank
53 Wall Street
New York, New York 10005

By: John J. E. Markham, II
Of Counsel

HENRY F. WERKER, D. J.

Plaintiff, pro se, brings this antitrust treble damage action against a purported class of all commercial banks in

Memorandum Decision and Order.

this district and all foundations operating investment portfolios managed by these banks. First National City Bank ("Citibank") is named as the representative party of the class of defendant banks and foundations. Prior to answering the complaint, Citibank has moved for summary judgment upon the grounds of *res judicata* based on the opinion of Judge Knapp in *Raitport v. Chase Manhattan Capital Corp., et al.*, 74 Civ. 462 (S.D.N.Y. January 9, 1975), wherein Judge Knapp granted the summary judgment motions of all defendants in that action including FNCB Capital Corporation, a wholly owned subsidiary of Citibank. For the reasons discussed below, Citibank's motion is granted.

The allegations and theories upon which plaintiff seeks recovery are stated in his complaint as follows:

- "(1) Plaintiff alleges that defendants have unlawfully refused to deal with him and restrained him from continuing and entering business as set forth below in violation of 15 USC 2;
- (2) Plaintiff alleges that defendants have conspired to refuse to deal with him in violation of 15 USC 1 & 2.
- (3) Plaintiff alleges that defendants have conspired to destroy investment banking industry for the goal of monopolizing the commercial banking industry in violation of 15 USC 1 & 2.
- (4) Plaintiff alleges that defendants conspired on behalf of automotive, appliances, energy producing and food producing industries to monopolize in violation of 15 USC 1 & 2.
- (5) Plaintiff alleges that defendants discriminate without justification against new manufacturing businesses in violation of 15 USC 13.

Memorandum Decision and Order.

(6) Plaintiff alleges that defendants discriminate without justification against small manufacturing companies competing or attempting to compete against energy producing, automotive, appliances and container industries in violation of 15 USC 13."

The plaintiff then proceeds to describe himself as an "inventor-entrepreneur" whose time and efforts are devoted to fighting such problems as inflation, safety and energy shortage. After describing the roles of "inventor-entrepreneurs" and commercial and investment banks in the American economic system, the plaintiff lists thirty-six (36) lines of products which would be manufactured by companies that he is attempting to organize and finance. According to the complaint, the defendants are involved in a "malicious conspiracy" to monopolize the automotive, major appliance, container manufacturing and energy producing industries. As part of this alleged conspiracy, the defendant banks and foundations have allegedly conspired and implemented policies to limit the financing of new companies including those organized by the plaintiff, which would seek to be competitors of established companies in the automotive, appliance, container and energy producing industries. Because of the alleged conspiratorial conduct on the part of the defendants, the plaintiff claims that he has been damaged in excess of the amount of two billion (\$2,000,000,000) dollars and asks that that amount be trebled, and for interests and costs.

In the litigation before Judge Knapp, the plaintiff sued four lending institutions licensed by the Small Business Administration as Small Business Investment Corporations. His complaint alleged violations of the Small Business Act, 15 U.S.C. §§ 631 *et seq.*, the Small Business Investment Act of 1958, as amended, 15 U.S.C. §§ 681 *et seq.*, the Economic Stabilization Act, 12 U.S.C. § 1904 (1973

Memorandum Decision and Order.

Supp.), the Sherman Act, 15 U.S.C. §§ 1 *et seq.*, and the Civil Rights Act, 42 U.S.C. § 1985. Judge Knapp concluded that none of the theories except the antitrust theory presented a claim upon which relief could be granted. Slip Opinion at 4. As part of his antitrust theory in that case the plaintiff alleged that the defendants were engaged in an "unscrupulous conspiracy to help monopolize certain industries, *i.e.*, to preclude establishment of new firms in [the] automotive field, in [the] appliance field, and [the] energy producing or energy conservation fields." At page 7 of his opinion Judge Knapp concluded that:

"Were the plaintiff able to show by competent evidence that the defendants were in fact 'instrumental [in preventing] other financial institution [sic] from helping plaintiff', for the purpose of 'restrain[ing] plaintiff from entering [the] trade of his choice', and that the defendants were 'engaged in an unscrupulous conspiracy to . . . monopolize certain industries . . . to preclude establishment of new firms in [the] automotive, . . . appliance . . . and energy producing or every conservation fields', he would be entitled to relief under 15 U.S.C. § 15." (footnote omitted)

After extensive discovery by the plaintiff Judge Knapp found that plaintiff was unable to produce any evidence of conspiracy save for his assumption that the only explanation for the refusal to finance his companies must be the existence of an "unscrupulous" conspiracy. At most, plaintiff was able to show parallel business behavior. As a consequence, Judge Knapp granted summary judgment to all of the defendants.

Citibank's argues that all of the claims made by the plaintiff in this action were fully adjudicated in the prior action before Judge Knapp, and thus the doctrine of *res*

Memorandum Decision and Order.

judicata bars this action. See *Saylor v. Lindsley*, 391 F.2d 965 (2d Cir. 1968). However, Citibank admits that it was not a party to the first action. Aside from the basic fact that one of the defendants in the prior action was a wholly owned subsidiary of Citibank, no other argument or authority is cited to show that Citibank has met the privity requirements necessary for the application of strict *res judicata* principles. See generally, IB J. Moore, Federal Practice ¶ 0.411[1] and [10] (2d ed. 1974). Compare Note, the Impact of Defensive and Offensive Assertion of Collateral Estoppel By A Nonparty, 35 Geo. Wash. L. Rev. 1010, 1022 ... n. 1967).

Although invoked under the broad rubrie of *res judicata*, Citibank's argument calls for application of the doctrine of collateral estoppel. In *Lawl v. National Screen Service*, 349 U.S. 322, 326 (1955), the Supreme Court noted the distinctions between *res judicata* and collateral estoppel:

"[U]nder the doctrine of *res judicata*, a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, such a judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit."¹

Undoubtedly, Judge Knapp's decision was a final judgment on the merits. Plaintiff was given a full and fair opportunity to prove his claims and when he failed to do so summary judgment was granted to the defendants. The granting of such a motion is a final adjudication on the merits. See Moore, *supra* at ¶ 0.409[1] and n. 26. Although it is not clear whether plaintiff has filed a timely

Memorandum Decision and Order.

notice of appeal from Judge Knapp's decision,² pendency of an appeal does not detract from the finality of the judgment. *See Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189 (1941); Moore, *supra* at ¶ 0.416[3]. Moreover, the fact that Citibank was not a party to the first action does not necessarily prevent it from asserting collateral estoppel since the requirement of mutuality has been liberalized. *See Zdanok v. Glidden Co.*, 327 F.2d 944 (2d Cir. 1964); *Blonder-Tongue Laboratories Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971).

The critical factor to be determined is whether the issues raised in this action were actually litigated and determined in the prior action. As discussed *supra* the only possible theory of recovery alleged in the prior suit was the anti-trust claim of an "unscrupulous conspiracy" to monopolize certain industries and refusal to finance the plaintiff's businesses. These very same allegations, form the basis for plaintiff's complaint in this action.³ Again a conspiracy to monopolize the same industries coupled with refusals to deal and discrimination against the plaintiff and other new manufacturing businesses is alleged. The core of both complaints is that over a period of years the plaintiff has asked the defendants in this action and the prior action to finance firms organized by the plaintiff, and that every defendant has refused to provide financing. In the prior action after plaintiff's failure to produce any evidence of a conspiracy, Judge Knapp concluded at p. 8 of his opinion that:

"[a]ll the plaintiff has been able to establish—or even to suggest—is that some of the defendants have refused to extend credit. Although this may be unpleasant—or even financially disastrous—to plaintiff, it gives him no cause of action under the Sherman Act."

Memorandum Decision and Order.

What plaintiff has done in this action is simply to "switch adversaries" from the subsidiary credit corporations in the prior action the parent of one of those corporations as a representative of all banks in this district and foundations with portfolios arranged by those banks. *See Bernhard v. Bank of America*, 19 Cal. 2d 807 (1942). The whole thrust of this action is the same as the prior action—one huge conspiracy to prevent plaintiff from manufacturing his inventions. As Professor Currie has noted:

"In a sense, the plaintiff who proceeds against one adversary and loses, only to try again against another, may be guilty of the same kind of trifling with the public interest against piecemeal litigation that gives rise to the rule against splitting a cause of action."

Currie, Mutuality of Collateral Estoppel: Limits on The *Bernhard* Doctrine, 9 Stan. L. Rev. 281, 301 (1957) (footnote omitted).

Plaintiff, no stranger to the federal courts—see Raitport v. General Electric Co., CCH 1974-2 Trade Cases ¶ 75,313; *Raitport v. General Motors Corp.*, 366 F. Supp. 328 (E.D. Pa. 1973)—had a full and fair opportunity to litigate the same claims in his prior suit. He cannot avoid the results of that suit by merely suing the parent banks and embellishing on his theories.

Motion for summary judgment granted.

So ORDERED.

Dated: New York, New York, March 31, 1975.

HENRY F. WERKER,
U. S. D. J.

Memorandum and Order.

(74 Civ. 462)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELI RAITPORT,

Plaintiff,

against

CHASE MANHATTAN CAPITAL CORP., FNCB CAPITAL CORPORATION,
HANOVER CAPITAL CORP. and MIDLAND CAPITAL CORP.,

Defendants.

APPEARANCES:

ELI RAITPORT

Plaintiff Pro Se

c/o Scientronic Advanced Products For Industry

8220 Castor Avenue

Philadelphia, Pa. 19152

SHEARMAN & STERLING

Attorneys for Defendant FNCB Capital Corporation

53 Wall Street

New York, New York 10005

By: JOHN J. E. MARKHAM, III, Of Counsel

CLEARY, GOTTLIEB, STEEN & HAMILTON

Attorneys for Defendant Midland Capital Corporation

1 State Street Plaza

New York, New York 10004

By: JAMES W. LAMBERTON, Of Counsel

Memorandum and Order.

MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant Chase Manhattan Corporation
Attorneys for Defendant Chase Manhattan Corporation
1 Chase Manhattan Plaza
New York, New York 10005
By: RICHARD C. TUPANO, Of Counsel

KRONEN & BERNSTEIN
Attorneys for Defendant Hanover Capital Corporation
485 Madison Avenue
New York, New York 10022
By: SHELDON E. KRONEN, Of Counsel

KAPP, D.J.

Plaintiff, proceeding *pro se*,¹ has filed a complaint against various lending institutions licensed by the Small Business Administration as Small Business Investment Corporations, alleging that their failure to finance his business ventures constitutes a violation of the Small Business Act, 15 U.S.C. §§ 631, *et seq.*, the Small Business Investment Act of 1958, as amended, 15 U.S.C. §§ 681, *et seq.*, the Economic Stabilization Act, 12 U.S.C. § 1904 (1973 Supp.) the Sherman Act, 15 U.S.C. §§ 1, *et seq.*, and the Civil Rights Act, 42 U.S.C. § 1985. An entrepreneur and inventor in the automotive, appliance and energy conservation fields, plaintiff claims that, in reliance upon advertisements by the defendants as to the availability of financing for small businesses, he "approached the defendants numerous times" for the purpose of obtaining capital for the development and production of his various inventions, and that defendants refused to finance his proposals. Plaintiff has concluded from such refusals that the defendants are "engaged in an unscrupulous conspiracy to help monopo-

Memorandum and Order.

lize certain industries . . . to preclude establishment of new firms in [the] automotive field, in [the] appliance field, and energy producing or energy conservation fields". Moreover, he claims that defendants "were instrumental to prevent [sic] other financial institutions [sic] from helping plaintiff", thus "restrain[ing] plaintiff from entering [the] trade of his choice", in violation of the Sherman Act. Finally, plaintiff has characterized defendants' alleged refusal "to assist" him as a "conspir[acy] to deprive him of his civil rights", in violation of the Civil Rights Act.

As a result of the alleged conspiracy in restriction of trade and the claimed violation of his statutory and constitutional rights, plaintiff claims to have suffered loss of profits in the amount of \$314,000,000.00, and seeks treble damages therefor.

On March 4, 1974 plaintiff filed an amended complaint containing a petition for a preliminary injunction. In essence, the relief sought was an order enjoining the defendants from discriminating against new businesses and from failing to assist the formation of new firms in the fields of energy conservation and environmental protection. After a hearing, the motion was denied on the basis of a finding that the plaintiff's remedy at law was adequate, since whatever injury he may have suffered could be compensated by money damages.

Subsequently, the parties proceeded with their discovery, under the direction of Magistrate Schreiber. After extensive discovery by plaintiff, two of the defendants, Hanover Capital Corporation ("Hanover") and Chase Manhattan Capital Corporation ("Chase") moved for summary judgment pursuant to F.R.C.P. 56. Upon the completion of discovery, the remaining defendants—FNCB Capital Corporation and Midland Capital Corporation—also moved for summary judgment. Although these motions were filed—and argued—separately, the court proceeded to treat

Memorandum and Order.

them as one for the purposes of its decision. For the reasons set forth below, their respective motions are granted.

Upon our analysis of the complaint, we must conclude that, with the exception, none of its theories presents a claim upon which relief may be granted. Neither the Small Business Act, nor the Small Business Investment Act create a private right of action in favor of a frustrated borrower against a small business investment company. *Royal Services, Inc. v. Maintenance, Inc.* (5th Cir. 1966), 361 F.2d 86, 92; *Jenkins v. Fidelity Bank* (E.D. Pa. 1973), 365 F. Supp. 1391, 1401; *United States v. McIntyre Veneer, Inc.* (M.D. La. 1972), 343 F.Supp. 1095, 1097. The decision whether or not to provide financing under the Small Business Investment Act is completely within the discretion of the Small Business Investment Company (SBIC). The function of each SBIC is to make loans to small business concerns "in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the [Small Business] Administration". 15 U.S.C. § 684(a). As set forth in the regulations, the principal limitations are that the funds may only be invested in small business concerns and only when there is evidence that the desired credit is not otherwise available on reasonable terms, 13 C.F.R. § 120.1(a) (1974); the loans may not be in excess of the statutory proscriptions, nor may they be for the purpose of paying off creditors, 13 C.F.R. § 120.2(d)(1)(i) (1974). In addition, there must be an assurance of repayment, 13 C.F.R. § 120.2(e) (1974) and the Funds of SBIC's cannot remain idle, 13 C.F.R. § 107.1003(a) (1974).

By way of introducing his claims under the Small Business Act and the Small Business Investment Act, the plaintiff somewhat ambiguously refers to the "Economy Stabilization Act, subchapter 21"² as an additional basis of jurisdiction. Although it is not clear from the com-

Memorandum and Order.

plaint to what statute the plaintiff is referring, a careful reading of the amendments to Chapter 21 of Title 15 suggests that plaintiff is relying upon the 1971 and 1973 amendments to the Economic Stabilization Act, which provide for the establishment of the President's National Commission on Productivity. These provisions were enacted as part of the Economic Stabilization Act, and not as a part of the Employment Act of 1946 (which comprises Chapter 21 of Title 15), even though they have been published as Section 1026 of the Employment Act of 1946, 15 U.S.C. §§ 1021, 1026 (1973).³ The only language in these provisions which is even remotely related to plaintiff's litigating theory is a general policy statement favoring the promotion of "efficient production and use of goods and services . . . which depends [in turn] on the effectiveness of management, *the investment of capital* for research and development and advanced technology . . ." 15 U.S.C. § 1206(a)(1) and (3) (1973) (emphasis added). There is apparently nothing more specific in § 1206 which bears any relation, however ephemeral, to plaintiff's theory. There most certainly is no provision creating a private right of action in favor of entrepreneur who claims to have been denied financing. In fact, § 1206 creates no private right of action whatsoever. All it purports to do is outline in some detail the duties and powers of the National Commission on Productivity.

Despite the plaintiff's failure to state a claim upon which relief may be granted under the Small Business Act, the Small Business Investment Act, the Economic Stabilization Act or the Civil Rights Act of 1861, we find that the complaint does state a cause of action under the Sherman Anti-Trust Act, 15 U.S.C. §§ 1, *et seq.* Were the plaintiff able to show by competent evidence that the defendants were, in fact, "instrumental [in preventing] other financial institution [sic] from helping plaintiff", for the purpose of

Memorandum and Order.

"restrain[ing] plaintiff from entering [the] trade of his choice", and that the defendants were "engaged in an unscrupulous conspiracy to . . . monopolize certain industries . . . to preclude establishment of new firms in [the] automotive, . . . appliance . . . and energy producing or energy conservation fields", he would be entitled to relief under 15 U.S.C. § 15?

However, the only "evidence" the plaintiff proffers, could by no stretch of the imagination meet his burden of proof under the statute. His entire case rests on the assumption that his inventions are so economically promising that the only explanation for the defendants' refusal to finance them must be the existence of an "unscrupulous" conspiracy. The plaintiff offers no expert testimony as to the worth and feasibility of his invention, but relies instead upon his own, inevitably self-serving, opinion. He has conducted extensive discovery, under the supervision of Magistrate Schreiber, but can point to no documentary evidence of any agreement among the defendants to monopolize certain industries in restraint of trade. Nor does he suggest the availability of any testimony, other than his own above described speculations, which would support his allegations that the defendants do in fact either monopolize or intend to monopolize the automotive, appliance and energy conservation fields.

In brief, all the plaintiff has been able to establish—or even to suggest—is that some of the defendants have refused to extend credit. Although this may be unpleasant—or even financially disastrous—to plaintiff, it gives him no cause of action under the Sherman Act. *United States v. Colgate & Co.* (1919), 250 U.S. 300, 307, *Dipson Theatres, Inc. v. Buffalo Theatres, Inc.* (2d Cir. 1951), 190 F.2d 951, cert. den. 342 U.S. 926 (1952). Such parallel business behavior, without more, does not establish an illegal conspiracy in violation of the Sherman Act. *Kreager v. Gen-*

Memorandum and Order.

eral Electric Co. (2d Cir. 1974), 497 F.2d 468, 471; *Raitport v. General Electric Co.* (S.D.N.Y. 1974) (Bonsal, J.), 1974—2 CCH Trade Cases, ¶ 75,313. As the Supreme Court observed in *Colgate, supra* (250 U.S. at 307, 39 S. Ct. at 468):

"In the absence of any purpose to create or maintain a monopoly, the act [Sherman Act] does not restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal."

The motions for summary judgment are, accordingly, granted.

So ORDERED.

Dated: New York, New York, January 9, 1975.

WHITMAN KNAPP
Whitman, Knapp, U.S.D.J.

Memorandum and Order.

FOOTNOTES

¹ Although proceeding *pro se*, plaintiff appears to be an unprejudiced litigator. Cf. *Railport v. General Electric Company, et al.*, 1974—2 CCH Trade Cases ¶75,313 (Bonsal, J., S.D.N.Y. 1974); *Railport v. Small Business Administration* (E.D. Pa. 1974) 380 F. Supp. 1059; *Railport v. National Bureau of Standards* (E.D. Pa. 1974) 378 F. Supp. 380; *Railport v. General Motors Corp.* (E.D. Pa. 1974) 366 F. Supp. 328.

² Presumably, the plaintiff meant subchapter 21 of Title 15 of the United States Code, since he lists it as the final citation in a string of citations, all of which were clearly indicated as being in Title 15.

³ These provisions may also be found, in the form of a note, under both 12 U.S.C. § 1904 and 5 U.S.C. § 5305.

⁴ Unlike most complaints invoking the Civil Rights Act of 1861, the instant one purports to state a claim under § 1985 alone, and not in conjunction with § 1983. Consequently, the discussion in the defendants' briefs concerning the absence of "state action" is beside the point.

⁵ 42 U.S.C. § 1985(3) provides, *inter alia*, that:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

⁶ If we should be wrong in our conclusion that the complaint on its face fails to state a cause of act⁷ a under § 1985(3), summary judgment would in any event have to be granted for the reasons stated in the concluding portions of this opinion—because of plaintiff's failure to suggest any evidence of conspiratorial action on the part of defendants.

⁷ "Section 15. Suits by persons injured; amount of recovery
"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELI RAITPORT,

Plaintiff-Appellant,

v.

COMMERCIAL BANKS LOCATED WITHIN THIS
DISTRICT AS A CLASS, FOUNDATIONS
OPERATING INVESTMENT PORTFOLIOS AND
MANAGED DIRECTLY OR INDIRECTLY BY
ABOVE SAID BANKS AS A CLASS,

Defendants-Appellees.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes
and says that he is over the age of 18 years. That on the 26th
day of September, 1975, he served two copies of the
Brief and Appendix of Defendant-Appellee First on
National City Bank on

Eli Raitport, Appellant, pro se

xxxxxxxxxxxxxx

by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said xxxxxx Appellant at
No. 1807 Mower Street, Philadelphia, Pa. (xxx),
that being the address designated by him for that purpose upon
the preceding papers in this action.

David F. Wilson

Sworn to before me this

26th day of September, 1975.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1975